App. F. IX-4

1934. (Laws)

File No. 31-34

Previous References

Laws 105-32 (1-3)
" 102-31 (1-4)

Serial Nos. 15-18, 20+22

Letter References.

Laws 18-39 (1, 25-26)

PRESERVED

GENERAL AND REVENUE SECRETARIAT.

Serial Nos. Sick

Part B for February 1937

SUBJECT.

Representation of the Public Prosecutor Shimoga to expunge the remarks made in his favour P 5335-9/Laws 31-34-169 12-2-36

Nos P 5061 & 17-2-37

Note P-PL. Shimoga

WD 0418—GPB—22,500—29-8-36

State that Govt do not see any reason to modify or expunge the observations made in the G.O. referred to

M Gyngen
16/2/37

6035 V 6061

Serial No.

From,

The Pr. Shimoga

Letter d 27.3.36 requesting in the circumstances stated to expunge the remarks made against him in G.O. no. P. 5335-9 Law 31/34-16 d 12.2.36, relating to the Conduct of the Suit O.S. 4/34-35 on the file of the Dn. Cr. Shimoga (Demand production of Govt. Order)

1) Kind reference is invited to para 31-32 of the notes in Law file 31-34 placed below. The G.O. has passed out when no body was examined on behalf of the deft and that is a serious defect in the Case. For the first time the Pr. says that he wrote to the Executive Engr. Hgs. Dn. Hassan Divn to depute an officer Conversant with the Case, and that no body turned up in spite of his requisition. The Pr. has never brought this fact to the notice of Govt. all along. If this was brought to notice in time, the Agent Hgs. Dn could have been requested to do the needful in the matter. There is therefore no ample justification to expunge the remarks made against him in the G.O. mentioned above.

ISD 1/4

2) A petition seems to have been filed to the Pr. Munsiff also. Please furnish up.

Shimoga d 27.3.36 recd & placed below.

NOTE.—Contn Sheet.

WD 03594—GPB—30,000—13-7-35

MR 1/4/36

3) The Pet[r] referred to the First Munsiff is placed below.

ISD 4/4.

4) The two petitions by mr B. Krishnadas, Public Prosecutor, Shimoga, one addressed to the Dewan direct and ~~the~~ the other to the first member but sent to the Secretary for being placed before the member for orders are submitted herewith. In the first place, it is a matter for consideration if mr Krishnadas is in order in moving the Dewan and the member in this manner in order to get certain observations made in a Govt order removed or expunged -

Secondly, in the petition to the Dewan, mr Krishnadas requests him "to kindly take independent opinion in the matter and expunge the remarks made against" while in the petition to the member, he requests him "to kindly take an independent view of the matter and expunge the remarks etc." - The insinuations contained in these and some other passages in the petition are, it is submitted, quite reprehensible.

5) On merits, I do not think the P. Pr has made out any case for

Serial No.

reconsideration of the orders passed in G.O. of 18-11-35. The point he raises is that the Case which was posted to 9-12-35 for evidence was "for some reason best known to the Court and though not moved by any of the parties to suit & though there were other Older & part heard Suits which were pending trial", was advanced & posted to 19-10-35 for evidence. Apart from the propriety of thus casting aspersions on the conduct of the Court, it is not clear why the Pr if he thought it necessary, should not have protested against this change in date. The way in which he allowed the alteration to be effected without protest shows that the Pr had no grievance at the time. The Pr says he wrote to the Ex: Supt Rys on 3rd Octr 1935 for making the Case ready on 19th. No witnesses were present on the 19th on behalf of Govt and therefore he says the Case was closed. But there is nothing on record to show that he moved for an adjournment or that he pressed upon the Court the necessity for examining witnesses on behalf of Govt. Evidently the Pr, one Krishnadas seems to have thought at the moment

NOTE.—Contn. Sheet.

WD 03594—GPB—30,000—18-7-35

(5004) 50 4:

Law File No. 31 of 1934 | General and Revenue Secretariat

that the plaintiff's case would fail on the question of limitation and consequently taken no further action to press the case of Govt regarding the other points.

6) Under these circ^{s}, the observations made in the Govt order of 18.11.35 to the effect that the case has not been properly handled on behalf of Govt in the Dt Ct, are, I submit, if I may say so with great respect, perfectly justified and correct.

Submitted for orders

Gen Secy) MM 6.4.36

GENERAL 6 APR. 1936 130

7) Subt for perusal. The Agent may perhaps be asked to state if the Public Prosr made a requisition to the Judge and if so why his request was not complied with. The rest of the representation may be considered as receipt of this reply to this enquiry

MM 6/4

First Member) MM 6/4

OFFICE OF THE FIRST MEMBER 7 APR. 1936 7301

JPR 9/4 MM 9/4

8) Draft MM 9/4

G.S. 1934-35. Dr. ee. Shimoga. 6061

7829

General and Revenue Secretariat | Law File No. 31 of 1936 | [App. F. III—2

Serial No.

9) Dft sd
TSD
11/4

10) For personal before issue
Gen Secy) 11/4/36

Secy
11/4
11) Issue
11/4/36

SECRETARIAT
11 APR. 1936
361

TYPING SECTION
11. APR. 1936
L. & REV. SECTT.

To,

16

The Agent, Mys. Rys.
no. S. 6500 d 10.4.36 enquiring whether
the Dr. Shimoga has made a requisition
to the Exc. Engr

Sus A
15/4/36

17

From,

The Agent, Mys. Rys.
no. 9829 X 35/1 d 20.6.36 stating that
the Asst Engr called on the Dr. Shimoga
on 9th and 10th of the following month, and
the Dr does not seem to have asked
him either to attend the Court or meet
him again for further assistance.

12) Submitted for orders, with reference to para 7 supra
TSD
25/6

Gen Secy)
Secy
27.6.36.

13) Please communicate relevant portion of Sub-Div
Asst if the AR Officer who met him was given
such visits about attending court or otherwise helping him
Also enquire of A- in what way Dr 6/4/36 Secy
Secy
28/6

SECRETARIAT
27 JUNE 1936
749

14) Draft

NOTE.—Contn. Sheet.

WD 0359—GPB—30,000—13-7-36

OS-ಸ್ಪೆಷಲ್-35 ಪತ್ರಗಳ ಸಂಖ್ಯೆ 789

Law-File No. 31 of 1936 | General and Revenue Secretariat

15

D/f Sub?

ISD 29/6

U/s Issue
MRL 29.6.36

To,

The P.W. Shimoga

No. G. 104 d 3.7.36 enquiring reason why Ass't Engr's name has been struck off the list of contractors.

TYPING SECTION 29 JUN. 1936 GENL. & REV. SECTT.

Sub A 9/7/36

I submit a draft for approval.

JB 27/8 MRL

18 Issue
MRL 27/8

TYPING SECTION 27 AUG. 1936 GENL. & REV. SECTT.

To

The P. W. Shimoga

No. P 1464, dt 28-8-36

Sub A 29/8/36

From

The P. W., Shimoga

Letter No. 209, dt 3-10-36

States that the blame entirely rests on the Railway/Engineering Dept. since it did not depute anyone who had personal knowledge of the matter

Serial No.

in dispute who could give evidence in Court
19 Subd. for perusal.

7/11

20 The first point is whether the PPr moved for an adjournment on the 19th Oct.r to enable him to examine witnesses on behalf of Govt or whether he closed the case voluntarily. The PPr admits there is no record made by the Dt Judge regarding the adjournment but says that the record made is incorrect. In the order sheet the Dt Judge says "Defendants' side has no witness and no evidence — Case closed on both sides." — It is really strange why the motion for adjournment if made has not been mentioned in the order sheet.

21 As regards the PPr's meeting with Sup.r on the 9th & 10th of Oct.r & his not giving him instructions the PPr denies the statements made by the Enquiring Staff in this behalf — The PPr has addressed to the Sp.r Sup.r a letter on 3.10.36 which gives clear instructions in the matter

W D 0417—GPB—90,000—8-9-36

2763

File No. of 193 . | General and Revenue Secretariat

Serial No.

I think in this respect the explanation of the P.P.s is the more probable and true of the two —

2nd Sub Forenders — Refer para 6 & 7

Gensey) DMC 7/11

GENERAL SECRETARIAT
9 NOV. 1936
163

23) Will Mr BKR also read through the papers and note his views. Ind 9.11.37.

It was these issues settled in this case as early as 17.1.35 and the case was posted for evidence to 8.7.35, with a direction that "documents and witness lists should be filed within a month. It was therefore the duty of the Public Prosecutor to have, in consultation with the Executive Engineer "filed" a witness list mentioning the names of persons proposed to be examined on behalf of Government. As there was an interval of nearly six months between the date of issues and the date of evidence, the P.P. has ample time to correspond with the Ex. Engineer and find out who

Serial No.

were all conversant with the facts of the case and to file a list of persons whom he would like to examine. He does not seem to have taken any steps in that direction. In his letter of 31.1.35 to the Ex. Engineer, the P.P. writes that the case is posted for Evidence 8.2.35, that documents will have to be filed in a month, and that a Subordinate of the Mill should be deputed to help him in the matter. There is no suggestion in this letter that any witness list should be filed. There is also nothing to show that either for the hearing on 8.2.35 or on 17.8.35, the P.P. wanted the Ex. Engineer to send an officer to give evidence on behalf of Government. It looks likely, therefore, that at that stage the P.P. must have thought that evidence on behalf of Government was unnecessary.

25) Post so far as the hearing on 19.10.35 is concerned, There is clear evidence in the P.P.'s letter of 3.10.35, that he wanted the Ex. Engineer to depute an officer conversant with the facts of the case, to help him and to give evidence, if necessary. Apparently no reply was sent by the Executive Engineer. It is however admitted that the P.P. and the Asst. Engineer met early in Oct. 1935, but as to what transpired at the meeting, we

NOTE—Contn. Sheet.

WD 0417—GPB—30,000—8-9-36

Serial No.

have two versions. The Assistant Engineer contends that he was not asked either to attend the Court or to meet the P.Pr again for further assistance. On the other hand, the P.Pr says that he met the Asst. Engineer Catnally, that the latter said he has no personal knowledge of the affairs, and that he would write to the Ex. Engineer to depute an officer having personal knowledge. If the Asst. Engineer did not tell the P.Pr had personal knowledge of the affairs, it is unlikely that the P.Pr would not have asked him to be present on the Date of hearing. Further, in the absence of any reply from the Ex. Engineer to the P.Pr's letter of 3.10.35, the P.Pr's Version that his meeting with the Asst. Engineer was Catnally, appears more probable.

26) In my opinion, there has been a contributory negligence both by the P.Pr. and by the Railway Engineering Dept. The P.Pr., who apparently thought, at a later stage in the case, that some evidence on behalf of Govt was necessary, while he should have moved much earlier in the matter. When

Serial No.

the P.Pr wrote clearly on 3.10.35 that the case would be heard and finished on 19.10.35 and that an officer having personal knowledge of the matter in dispute should be sent on the hearing date. It was the plain duty of the Ex. Engineer for Railways to have sent a prompt reply and deputed such an officer on the hearing date. It looks as though the Railway Engineering Dept. has not rendered that help in the case, which it was bound to give.

Gen. Secy) BXR 6.1.37

GENERAL SECRETARY. 5 JAN. 1937 97

Please post up on 20-1-37. Inv 6/1/37

for perusal the papers. I suppose in other matters action is being taken separately. Inv 6/1

Law B (20-1-37) 8-1-37

BXR 6.1.37

Subd for perusal. Regarding the recovery of the amount from our Devaraja Mudaliar, the Chief Conservator of Forests has already been requested (in No. P 3861 dated 15-12-36) to get a draft plaint prepared in consultation with the P.Pr. Srirangam, and obtain sanction of Government in due course.

CB 19/1

BXR 20-1-37

GEN. SECRETARY. 20 JAN. 1937 5-99

Gen. Secy).

The notes from paragraph 20 to paragraph 26 are for perusal with

NOTE—Contn. Sheet.

WD 0417—GPB—30,000—8-9-36

270

Remarks against Public Prosecutor
Skeinofa in re OS 12/34-35 on the file of Dt Judges Chamber

Law File No. 31 of 1934 | General and Revenue Secretariat

Serial No.

reference to the minute dated 8/4/36.
The Public Prosecutor should have taken steps to get evidence produced. It is not clear if he asked for an adjournment and this was refused. It looks also as if the Ry Dept did not give him the help he asked for. This view may be communicated both to the PP & the Ry Dept.

The result of the further action taken to ascertain the amount due will be ascertained.

29/1
BKR
30.1.37

(First Member)

14/2
5/2
Draft
BKR
5.2.37

Subd with a dft. for approval.

BKR
12.2.37

(Gen. Secy). For perusal before issue
17/2/37.

This ch Secy
First Member)

12/2
BKR
12.2.37
BKR
13.2.37

14/2

Done
BKR
15.2.37

Issued vide p. 50/1, 2 to Agent R

GENERAL SECRETARIAT
12 FEB. 1937
1377

TYPING SECTION
16 FEB 1937

FIRST SECTION
30 JAN 1937
No 4617

OFFICE OF THE DEWAN OF MYSORE
28.3.36
1811

To

Amin-Ul-Mulk Sir Mirza M. Ismai.Kt.,C.I.E., K.C.I.E.,
O. B. E.,
Dewan of Mysore,

BANGALORE.

PRIVATE SECRETARY.
TO THE DEWAN OF MYSORE.

Sir,

I, the undersigned beg to bring to your personal notice the following facts and solicit early orders in the matter.

1. That one Devaraja Modaliar, a Railway Contractor of Bhadravati, who had undertaken certain contracts for the construction of Kesarahalla bridge in the Tarikere-Narasimharajapur Tramway line and also to supply Ballast quartz for the railway line between Birur and Tarikere, filed a suit in the District Court, Shimoga in O. S. No. 2/34-35 against the Chief Secretary to the Government and the Agent,Mysore Railways for the recovery of Rs. 669/- and odd and interest thereon on the ground that certain amounts due to him on the bills submitted for the works completed by him have been improperly with-held from payment and the Government ordered the suit to be contested.

2. The contention for the Government was that the said contractor had to pay the seignorage amount of Rs. 669-10-0 to the Forest Department for having quarried the stone from the Hadikere State Forest within the Bhadravati Division, that a claim for the said amount was laid by the District Forest Officer, Bhadravati on the amounts due to the contractor on

on his bills and that the said claim was adjusted out of the money due to him with his consent and so on. On this, the Court settled on 17-1-1935 7 issued for determination, the principle ones being (1) Is the Plaintiff not liable to pay the seignorage charges claimed by the Forest Department for the ballast stones collected by him from the Forest area.

(2) Did the plaintiff consent to pay the said charges under pressure and is he liable to pay seignorage only at 2 annas per 100 cubic foot.?

(3) Is not the plaintiff estopped from claiming the said charge or Royalty amount and from contending the validity of the adjustment made with regard to the same and

(4) Is the suit in time ?

3. It will be noticed from the nature of the issues framed in the case that the burden of proof rests entirely on the plaintiff contractor and the Government is placed under no obligation to prove any issued in the case. After this, the case was adjourned for trial to 8-7-1935 and from the latter date it was subsequently adjourned to 17-8-1935 ; 23-9-1935 and 9-12-1935 on account of Sessions.

4. But on 30th September for some reason best known to the Court and though noy moved by any of the parties to suit and though there were other older and part-heard suits which were pending trial, the Court advanced this case by more than 2 months from 9-12-1935 and reposted the case for trial to 19-10-1935 and on 19th October 1935, after plaintiff examined 4 witnesses on his side, his case was closed and as no witnesses were present on

on behalf of Government, the case was closed for both sides and arguments were heard. The suit was adjourned to 30th October 1935 for Judgment at Chickmagalur camp and the decision was pronounced on 31st October decreeing the Plaintiff's suit with costs.

5. Soon after the suit was advanced on 30-9-1935 and reposted for trial to 19th October, I wrote to the Executive Engineer,Mysore Railways,Hassan Division,in my letter No.119 dated 3-10-1935 (Copy enclosed for kind perusal) stating that the case would be taken up and finished on 19th October, that an Officer of the Department conversant with the matter in issue and the plaintiff's agreement of his seignorage due, might be deputed to my office on the hearing date to assist me during trial so that I may examine him on the Government side.

6. Notwithstanding my requisition for attendance, no Officer of the Railway Engineering Department turned up on the hearing date and hence, no witnesses could be examined on the Government side.

7. However, the decision of the Court being reported to the Government, I was asked by the General Secretary to the Government in his letter No. P. 3299/LAW.31-34-4 dated 18-11-1935 to express my opinion whether there is any case for appeal together with the information as to the last day on which the appeal could be filed. In response to this, I have sent two letters No. 268 dated 22-11-1935 and 286 dated 18-1-1936 that the suit was barred by limitation and that the case may be taken up in appeal before the High Court.

8. But the Government has passed the Order No. P. 5335 -9/ LAW. 31-34-14 dated 12th February 1936

considerably prior to the expiry of limitation period for preferring an appeal, to the effect that the Government are advised that this is not a fit case for appeal with the observations that the case has not been properly handled on behalf of the Government in the District Court, Shimoga, as no one was examined to establish the liability of the plaintiff to pay the seignorage of Rs. 669-10-0 claimed and that the District Judge had therefore to leave this question open for settlement in a separate suit.

9. But I may be permitted to point out that I am not concerned with the decision of the Government to prefer an appeal or not and to express my humble opinion that the Judgment of the District Court is erroneous and inappropriate and that the case deserved to be placed before the High Court for its consideration since the suit is timebarred from the allegations found in the plaintiff's pleadings & the District Judge has held the plaintiff's consent as having been given under undue influence & coercision without any evidence on the point. However, what I am seriously concerned with is the unjust and unjustifiable observations made in the order which have cast an aspersion on my handling of the case.

10 I respectfully beg to submit that these observations are one-sided and that they have hit me behind my back without calling for any explanation as to why no one was examined on the Government side and these are thoroughly unjustifiable as the failure to examine witnesses on Government side was due to the latches of the Railway Engineering Department who failed to produce the witnesses though informed in time and who have taken no interest in the progress of the litigation.

11. I wish to submit further that the result of the case did not depend on the examination of any witnesses

on the side of the Government to establish the liability of plaintiff to pay Rs. 669-10-0 towards seignorage charges as there is no issue settled on the point and there was no necessity for the Government to prove this point as the issues stand.

12. Moreover as the District Judge has adopted in paras 11 and 20 of his Judgment the reasoning that at this stage, it is unnecessary to consider whether the plaintiff is or is not bound to pay any Royalty or seignorage to the Forest Department and has decided the suit mainly on the ground that the contractor's consent for the adjustment was not free and that the adjustment was not lawful, the observations found in the Government Order that I have not properly handled the case for not examining witnesses on Government side is plainly unjustifiable and an unmerited attack on my capacity as an Advocate.

13. The further observation " that the District Judge had therefore to leave this open for settlement in a separate suit " is not intelligible and it is difficult to conceive how the Royalty due to the Forest Department in the year 1931 could not be enforced in a separate suit in the year 1936 after a lapse of 5 years and after adjustment of accounts. This is a matter,however. for future consideration and this observation seems to be in justification of not pushing the litigation any further and supporting the Judgment of the District Judge.

14. I respectfully request you to kindly take independent opinion in the matter and expunge the remarks made against me from the Government Order as they are injurious to my reputation as a Government Pleader.

I beg to remain,
Sir,
Your most obedient servant,

B. Krishna Rao
Public Prosecutor,
Shimoga Division,

Shimoga.
Date. 27-3-36.

PROCEEDINGS OF THE GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE.

Read:-

Government Order No.P.1278-81/Law 31-34-6 dated 6th September 1934 sanctioning the defence of the Suit O.S.2/34-35 on the file of the District Court, Shimoga (Devaraja Mudaliar Vs.Government of Mysore) suit relating to the contract of collecting ballast on Birur-Shimoga Section.

2. Correspondence ending with the letter No.268 dated 22nd December 1935 from the Public Prosecutor Shimoga intimating that the above suit has been decreed with costs and forwarding the certified copies of Judgment and decree and pointing out that there are some points fit to be considered by the appellate court if the case is taken in appeal.

Order No. P 5335-9/Law 31-34-14.

Dated Bangalore 12th February 1936.

Government are advised that this is not a fit case for appeal. The Agent Mysore Railways will therefore take early action to satisfy the decree passed. The case does not seem to have been properly handled on behalf of Government in the District Court, Shimoga as no one was examined to establish the liability of the plaintiff to pay the seigniorage of Rs.669-10-0 claimed. The District Judge had therefore to leave this question open for settlement in a separate suit. The Forest Department should examine immediately in consultation with the Public Prosecutor, Shimoga, if there is sufficient tangible evidence to establish the claim for seigniorage fees in this case and make an early report so that further action to file a suit in the matter may be considered.

13/2/36

Sd/- [illegible]
General Secretary to Government.

ISD.

To

The Public Prosecutor, Shimoga.
The Agent Mysore Railways with a certified copy of the decree.
The Comptroller to Government.
The Secretary, Mysore Railways.
The Chief Conservator of Forests in Mysore.

Letter No. 119 dated 3-10-35 from the Public Prosecutor, Shimoga Division, Shimoga ~~Division~~, to the Executive Engineer, Mysore Railways, Hassan Division, Hasan.

-oOo-

SUBJECT:- O.S. 2/34-35 on the file of District Judge.

(Devaraja Mudaliar vs Agent, Mysore Rail-Ways.)

The above suit is posted for evidence to 19th instant and the case will be taken up and finished that day.

The Plaintiff has taken the contentions that he is not liable to pay the seignorage charges for removal of metal from the Government Land as the agreement is silent about it and that even if he is liable, he has to pay only a lesser amount and not the amount claimed on behalf of the Government, So, I request you to depute an officer of your Department who is conversant with these matters and who can intimate me about the agreement in question and the rate of seinorage usually charged, to attend my office on 19th instant and to help me during the trial of the suit.

If my officer is personally aware of the agreement in question he may be preferably deputed so that I may examine him on Government Side, if it is necessary.

-oOo-

"COPY".

BKR

KASR/17-3.

Letter No. nil dated 31-1-35 from the Public Prosecutor Shimoga Division, Shimoga, to the Executive Engineer, Mysore Railways, Hassan.

-oOo-

With reference to your letter No. R.1274-76 dated 21/23-1-35, I have the honour to state that the O.S. No. 2/34-5 (Devaraja Mudaliar vs. GOVERNMENT OF MYSORE) on the file of the District Judge, Shimoga was posted to 17-1-35 for framing issues. Draft-Issues filed have been approved and the case stands posted to 8th July 35 for Evidence. Documents will have to be filed within a month. So I request you to deputate a subordinate of your office to attend my office and help me in the matter.

-oOo-

"COPY".

BKA

KASR/17-3.

Letter No. 286 dated 13th January 36 from the Public Prosecutor, Shimoga Division, Shimoga to the General - Secretary, B a n g a l o r e.

-oOo-

SUBJECT:- O.S.2/34-5 D-T.C. Shimoga.

With reference to your letter No. 84399 dated 7-1-36 and subsequent reminder, I have the honour to forward herewith the copies of the depositions of witnesssss and of the - Exhibits filed in the above case and to state that the two files of the Executive Engineer's Office, Hassan sent to me with your letter No. P.1278-81/Law 31-4-6 dated 6/7-9-34 have been sent to the Agent, Mysore Railways, Mysore with my letter No. 220/30-11-35/2-12. as per his letter No. 3635.F1/ 39/4 dated 9-11-35 and the rest of the records have already submitted to you with my letter No. 263 dated 23-12-35 together with the copies of decree and Judgement.

Exhibits C & IV indicate that the Plaintiff had definite information before the end of June 1931 that his dues have been adjusted towards Forest dues and hence he should have filed his suit within the end of June 1934. Hence the suit is barred by limitation.

-oOo-

"COPY".

BKR

KASR/16-3.

LYSORE RAILWAYS.

No. Fl.29/5/35-6 Dated 14th December 35.

To

The Agent,

Mysore Railways, Mysore.

Dear sir,

Re: O.S. No.2/34-5 Devaraja Mudaliar vs.
GOVERNMENT OF MYSORE & ANOTHER.

-oOo-

Referring to your Memo No. 3755 dated 13-11-'35, sending copy of Shimoga Public Prosecutor's letter dated 9-11-'35, I beg to request that the Public Prosecutor, Shimoga, ~~xx~~ may kindly be addressed to consult the General Secretary, whether the case could be taken up for appeal, and if so, to do - needful in time.

As already advised we withheld the amount at the instance of the Forest Department and also as agreed to by Mr.Devaraja Mudaliar.

I am sending a copy of this letter to the Public Prosecutor

Yours faithfully,

Sd/- Y.K.Ramachandra Rao.

Superintendent, Way & Works.

-oOo-

No. 3051-Fl.29/5/35-36 Dated 14th December 35.

Copy is forwarded with compliments to the Public Prosecutor Shimoga for ~~xx~~ favour of doing needful further.

Sd/- Y.K.Ramachandra Rao.

Superintendent, Way and Works.

-;O;-

"COPY".

RKA

60 61
P

—GPB—

19

From

The Public Prosecutor
Shimoga Division
Shimoga.

To

The General Secretary to the
Government of Mysore

Dated 27-3-36 Bangalore.

Despatched 28-3-36

Received

General No.

No. 367

Enclosure No. One petition
one letter

Sir,

In forwarding herewith my petition addressed to the First Member of the Council, Bangalore, I have the honour to request you to kindly place it before him and obtain his orders.

I have the honour to be
Sir,
your most obedient Servant

B. Krishna Rao
Public Prosecutor
Shimoga Division.
27-3-36

A similar petition was addressed to the Dewan. Please put up with papers
MNL 1/4/36.

To

RAJAMANTRA PRAVINA,

S.P.Rajagopala Chari, Esq., B. A., B.L.,

First Member of Council,

BANGALORE

Sir,

I, the undersigned beg' to bring to your personal notice the following facts and solicit early orders in the matter.

1. That one Devaraja Modaliar, a Railway Contractor of Bhadravati, who had undertaken certain contracts for the construction of Kesarahalla bridge in the Tarikere-Narasimharajapur Tramway line and also to supply Ballast quartz for the railway line between Birur and Tarikere, filed a suit in the District Court, Shimoga in O. S. No. 2/34-35 against the Chief Secretary to the Government and the Agent,Mysore Railways for the recovery of Rs. 669/- and odd and interest thereon on the ground that certain amounts due to him on the bills submitted for the works completed by him have been improperly with-held from payment and the Government ordered the suit to be contested.

2. The contention for the Government was that the said contractor had to pay the seignorage amount of Rs. 669-10-0 to the Forest Department for having quarried the stone from the Hodikere State Forest within the Bhadravati Division, that a claim for the said amount was laid by the District Forest Officer, Bhadravati on the amounts due to the contractor on

on behalf of Government, the case was closed for both sides and arguments were heard. The suit was adjourned to 30th October 1935 for Judgment at Chickmagalur camp and the decision was pronounced on 31st October decreeing the Plaintiff's suit with costs.

5. Soon after the suit was advanced on 30-9-1935 and reposted for trial to 19th October, I wrote to the Executive Engineer, Mysore Railways, Hassan Division in my letter No.119 dated 3-10-1935 (Copy enclosed for kind perusal) stating that the case would be taken up and finished on 19th October, that an Officer of the Department conversant with the matter in issue and the plaintiff's agreement of his seignorage due, might be deputed to my office on the hearing date to assist me during trial so that I may examine him on the Government side.

6. Notwithstanding my requisition for attendance, no Officer of the Railway Engineering Department turned up on the hearing date and hence, no witnesses could be examined on the Government side.

7. However, the decision of the Court being reported to the Government, I was asked by the General Secretary to the Government in his letter No. P. 3299/LAW.31-34-4 dated 18-11-1935 to express my opinion whether there is any case for appeal together with the information as to the last day on which the appeal could be filed. In response to this, I have sent two letters No. 268 dated 22-11-1935 and 286 dated 18-1-1936 that the suit was barred by limitatio and that the case may be taken up in appeal before the High Court.

8. But the Government has passed the Order No. P. 5335 -9/ LAW. 31-34-14 dated 12th February 1936

considerably prior to the expiry of limitation period for preferring an appeal, to the effect that the Government are advised that this is not a fit case for appeal with the observations that the case has not been properly handled on behalf of the Government in the District Court, Shimoga, as no one was examined to establish the liability of the plaintiff to pay the seigniorage of Rs. 669-10-0 claimed and that the District Judge had therefore to leave this question open for settlement in a separate suit.

9. But I may be permitted to point out that I am not concerned with the decision of the Government to prefer an appeal or not and to express my humble opinion that the Judgment of the District Court is erroneous and inappropriate and that the case deserved to be placed before the High Court for its consideration since the suit is timebarred from the allegations found in the plaintiff's pleadings & the District Judge has held the plaintiff's consent as having been given under influence & coercision without any evidence on the point. However, what I am seriously concerned with is the unjust and unjustifiable observations made in the order which have cast an aspersion on my handling of the case.

10. I respectfully beg to submit that these observations are one-sided and that they have hit me behind my back without calling for any explanation as to why no one was examined on the Government side and these are thoroughly unjustifiable as the failure to examine witnesses on Government side was due to the latches of the Railway Engineering Department who failed to produce the witnesses though informed in time and who have taken no interest in the progress of the litigation.

11. I wish to submit further that the result of the case did not depend on the examination of any witnesses

on his bills and that the said claim was adjusted out of the money due to him with his consent and so on. On this, the Court settled on 17-1-1935 7 issued for determination the principle ones being (1) Is the Plaintiff not liable to pay the seignorage charges claimed by the Forest Department for the ballast stones collected by him from the Forest area.

(2) Did the plaintiff consent to pay the said charges under pressure and is he liable to pay seignorage only at 2 annas per 100 Cubic foot.?

(3) Is not the plaintiff estopped from claiming the said charge or Royalty amount and from contending the validity of the adjustment made with regard to the same and

(4) Is the suit in time ?

3. It will be noticed from the nature of the issues framed in the case that the burden of proof rests entirely on the plaintiff contractor and the Government is placed under no obligation to prove any issues in the case. After this, the case was adjourned for trial to 8-7-1935 and from the latter date it was subsequently adjourned to 17-8-1935 ; 23-9-1935 and 9-12-1935 on account of Sessions

4. But on 30th September for some reason best known to the Court and though not moved by any of the parties to suit and though there were other older and part-heard suits which were pending trial, the Court advanced this case by more than 2 months from 9-12-1935 and reposted the case for trial to 19-10-1935 and on 19th October 1935, after plaintiff examined 4 witnesses on his side, his case was closed and as no witnesses were present on

on the side of the Government to establish the liability of plaintiff to pay Rs. 669-10-0 towards seignorage charges as there is no issue settled on the point and there was no necessity for the Government to prove this point as the issues stand.

12. Moreover, as the District Judge has adopted in paras 11 and 20 of his Judgment the reasoning that at this stage, it is unnecessary to consider whether the plaintiff is or is not bound to pay any Royalty or seignorage to the Forest Department and has decided the suit mainly on the ground that the contractor's consent for the adjustment was not free and that the adjustment was not lawful, the observations found in the Government Order that I have not properly handled the case for not examining witnesses on Government side, is plainly unjustifiable, and an unmerited attack on my capacity as an Advocate.

13. The further observation " that the District Judge had therefore to leave this open for settlement in a separate suit " is not intelligible and it is difficult to conceive how the Royalty due to the Forest Department in the year 1931 could now be enforced in a separate suit in the year 1936 after a lapse of 5 years and after adjustment of accounts. This is a matter, however, for future consideration and this observation seems to be in justification of not pushing the litigation any further and supporting the Judgment of the District Judge.

14. I respectfully request you to kindly take an independent ~~opinion in~~ view of the matter and expunge the remarks made against me from the Government Order as they are injurious to my reputation as a Government Pleader

I beg to remain,
Sir,
Your most obedient servant,
B. Krishna Rao
Public Prosecutor,
Shimoga Division,

Shimoga.
Date. 21 -3-36

Copy of Letter No 119 Dated 3-10-1935 from the Public Prosecutor Shimoga Division, Shimoga to the Executive Engineer, Mysore Railways Hassan Division, Hassan

"

Subject:- O.S. 2/316-35 on the file of the District Judge, Shimoga [Devaraja Hodaliar V/S Agent, Mysore Railways].

The above Suit is posted for Evidence to 19th instant and the case will be taken up and finished that day.

The plaintiff has taken the contentions that he is not liable to pay the Seigniorage charges for Removal of metal from the Government land as the agreement is silent about it and that even if he is liable, he has to pay only a lesser amount and that the amount claimed on behalf of the Government. So, I Request you to depute an officer of your Department who is Conversant with these matters and who can instruct me about the agreement in question and the Rate of Seinorage usually charged, to attend my office on 19th instant and to help me during the trial of the Suit

Exhibit

If any officer is personally aware of the agreement in question he may be preferably deputed so that I may examine him on Government side if it is necessary.

"Copy"

Public Prosecutor
Shimoga Division.
27. 3. 86

Appendix F G—1]

SUBJECT.....

.....

.....

Diary No. of letter replied to.....

General and Revenue Secretariat

( )

the *193* .

Date of issue 14. 4. 36

Signed by Mr. D.S.K

Extract paras 5 & 6

List of enclosures.....

Copied by .....

Examined by.....

Section Law

File No. 31-34

Serial No. 16

No. P 6800 (Secret.)

To The Agent, Mys. Rys

O.S. 2/3555 on the file of the Dy. Ch. Sheriff

(Devaraja Mudaliar vs Govt)

Sir,

With reference to the Correspondence ending with the G.O. no. R. 5555-9 Law 31-34-14 dt 12-2-36, I am directed to forward herewith ~~a copy of the representation dt 27-3-36~~ an extract from letter dated 27-3-36 received from the Dy. Sheriff, ~~requesting that to expunge certain portions of the G.O. read above~~ requesting that the remarks may be expunged, and to enquire whether the Dy. Sheriff made requisition to the Executive Engr Mysore Rys, Hassan Dn referred to, and if so why his request

was not complied with.

I have the
(just) [illegible]

TSD
11/4

GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE

General and Revenue Secretariat

No. P 6800 Law 31-34-15 Dated, Bangalore, 14th April 1936.

Sec I

From

The *General Secretary to the Government of His Highness the Maharaja of Mysore.*

To

The Agent,
Mysore Railways,
Mysore.

Sir,

O.S.2/34-35 on the file of the District Court, Shimoga.(Devaraja Mudaliar Vs.Government of Mysore).

With reference to the correspondence ending with Government Order No.P.5335-9/Law.31-34-14 dated 12th February 1936, I am directed to forward herewith an extract from letter dated 27th March 1936 received from the Public Prosecutor, Shimoga and to enquire whether the Public Prosecutor made a requsition to the Executive Engineer, Mysore Railways, Hassan Division and if so why his request was not complied with.

I have the honour to be,

Sir,

Your most obedient servant,

For General Secretary to Government.

ISD

7829 838

VPV A. 279 1000 11 5 36

MYSORE RAILWAYS

All communications should be addressed to the Agent, Mysore Railways, Mysore by TITLE, not by NAME

AGENT'S OFFICE,

Mysore, 24th June 193 6.

No. 9919 /Fl. 39/1

Encls.

From

H. D. SINCLAIR, Esq.,

Agent, Mysore Railways,

MYSORE.

To

RECEIVED 25 JUNE 1936

The Secretary
to the Government of Mysore,
General Department,
Bangalore.

Sir,

2nd Reply Note 25/6

Devaraja Mudaliar Vs Government of Mysore.
O.S.2/34-35 on the file of the District Court, Shimoga.

With reference to your letter No.P.6800/Law.31-34-16 dated 14-4-1936 and subsequent reminder thereon, I have the honour to state that on an enquiry I find that with reference to the Public Prosecutor's letter of the 30th September 1935, the Assistant Engineer called on him on 9th and 10th of the following month, when the Public Prosecutor does not seem to have asked him either to attend the Court or meet him again for further assistance. The Department was interested in the case and if clear instructions had been given by the Public Prosecutor in the matter, I do not think it would have been disregarded by any of the Officers of the Railway. However, I have issued instructions to the Heads of Departments that in future the Departmental Officers should keep on meeting Public Prosecutors concerned, if any important cases are pending, whenever their assistance is required or sought for.

I have the honour to be
Sir,
Your most obedient servant,

A.S.

Agent.

GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE

General and Revenue Secretariat

No. P 104 Law 31-36-18 Dated, Bangalore, 30th June 1936.

From

The *General Secretary to the Government of His Highness the Maharaja of Mysore.*

To

The Public Prosecutor,
~~Mysore.~~

Sir, O.S. 2/34-35 on the file of the District Court Shimoga. (Devaraja Mudaliar Vs. Government).

With reference to your petition dated 27th March 1936 requesting for the expunging of certain observations made in Government Order No.P. 5335-9/Law 31-34-14 dated 12th February 1936, I am directed to enquire whether you moved the Court for an adjournment on 19th October 1935 or pressed upon the Court the necessity for examining witnesses on behalf of Government in the case and if so whether any record has been made of this request.In this connection, the Agent, Mysore -- Railways reports as follows;-

> " I find that with reference to the Public Prosecutor's letter of the 30th September 1935, the Assistant Engineer called on him on 9th and 10th of the following month when the Public Prosecutor does not seem to have asked him either to attend the Court or meet him again for further assistance. The Department was interested in the case and if clear instructions had been given by the Public Prosecutor in the matter, I do not think it would have been disregarded by any of the officers of the -- Railway."

I am to enquire if the Railway Assistant Engineer met you as stated above and if so whether he was given necessary instructions about attending the Court or otherwise helping you in the conduct of the case.

I have the honor to be,
Sir,
Your most obedient servant,

For General Secretary to Government.

Appendix F G—1]

SUBJECT.....

.....

.....

Section Law

File No. 3134

Serial No. 18

No. P104

Diary No. of letter replied to.....

To

The Hon. ~~Mr.~~ Shinoja

O.S. 43/35 on the file of the

Dist. Ct. Shimoga

(Devaraja Urs Malavia. vs. Govt.)

General and Revenue Secretariat

( )

the *193* .

Date of issue 3.7.36

Sir,

Signed by Mr. N.R.J.

With reference to your petition dated 27.2.36 requesting for deletion of observations made in expunging of certain portions of the G.O. no. P. 5335-9 Law 3134-III d 12.2.36 I am directed to enquire whether ~~you have~~ the Court ~~is willing to record to that effect~~ you moved for an adjournment on 19th Oct 1935 in case upon the Court the necessity for examining witness on behalf of Govt in the case and if so whether any request has been made of this nature -

List of enclosures.....

Copied by 3/7/36

Examined by.....

close Lemm

a Copy of the remarks of the
pres - Mysore Rly and to enquire.
Letter the Rly officer Mr met
& was given necessary instructions
how attending Court or otherwise
assist you.

(Code matter entirely wrong)

I have etc
for Gen Secy
ISD 29/4

In this connection, I am to state the
Agent, Mysore Railways reports as follows :-

"I spoke with repr any of the officers
of the Rly"

I am to enquire if the Rly asst Supt met you
as stated above & if so whether he was given necessary
instructions about attending the Court ~~on 19th Oct~~
or otherwise helping you in the Conduct of the
Case -

Yours etc

DAP

2763
P 636

No. 209
Encl 4
(Immediate)

Office of the Public Prosecutor,
Shimoga Division,
Dated Shimoga the 3rd Nov 1936.

Law 31-34-20

From

B. Krishna Rao, Esq., B.A., B.L.,
Public Prosecutor,
Shimoga Division,
Shimoga.

GENERAL SECRETARY.
5 NOV. 1936

To

The General Secretary,
to the Government of His Highness the
Maharaja of Mysore,
Bangalore.

Sir,

Subject:- O.S.2/34-35 on the file of
District Court.
(Devaraja Modaliar Vs. Govt.)

With reference to, your letter No.F.104 Law-31-34-18 dated 3rd July 1936 and the subsequent reminders thereon, I have the honour to state that on 19th October 1935 when the plaintiff finisned the examination of the 4 witnessess present on his side I was asked by the Court to state whether any of my witnesses were in attendance in Court and I submitted that none were in attendance on that day, that I had written within time to the Executive Engineer, Mysore Railways, Hassan to send the witness to be examined on our side and that no witness had been deputed for that day. I further moved the Court for an adjournment for the production of evidence on our side. The Court refused this request and closed the case on both the sides and heard arguments.

From the copy of the ordersheet obtained from the

Court

Court it is apparent that my request for an adjournment has not been recorded expressly in the order sheet of the day. But it mentions the fact that no witness on the - Government side were present and that no evidence was - available on that day. The Court has further recorded the fact of the case for the Government being closed by it so that the closure of the case for the Government by the - Court implies that there was a motion for an adjournment on behalf of the Government andthat the motion has been negatived. I respectfully submit that I cannot be blamed for the Judge's failure to make an express record of my motion for an adjournment as his writing is always found without particulars and is more often vague ~~in an~~ an explicit and legible is in the habit of of ignoring even the most important and salient facts and documents relied on by the counsels appearing - for the parties. As an instance I would mention the - ~~existing~~ reliance of a document Exhibit 'B' which is filed by - Plaintiff and which proves that the Executive Engineer had authority under clause 3 thereof to deduct the seignorage amount due to the Forest Department out of his bill amount and the rule 20 of Mysore Land Revenue Rules under which the Executive Engineer in-charge of the work should collect Royalty at the prescribed rate and credit the same to the Land Revenue when the stones are removed from the Government land. These points were fully stressed on behalf of the Government in my arguments. But yet the Judge has entirely ignored these important circumstances and thefe is not a word about the existance of this document at all or of any attempt made to get over the effects of its recitals and no reference to the above-said rule and yet the Judge has held that the Executive Engineer had no authority to

demand

demand for and to collect the Royalty on behalf of the Forest department and that the adjustment by the Executive Engineer is invalid and improper. Again, the District Judge's remarks in Para 20:- "in this suit it is unnecessary to consider whether Plaintiff is liable to pay any Royalty or - seignorage to the Forest Department, Bhadravathi Division

x x x x x x

x x x x x x

If anything were due to the Forest Department may claim that from the Plaintiff. x x x x

x x x x x x x

So the question whether the Plaintiff is liable to pay any seignorage to the Forest Department and if so how much he has to pay need not be considered." Clearly indicate that the District Judge considered it unnecessary that any evidence shouldbe adduced on behalf of the Government to prove the amount of Royalty payable by Plaintiff and therefore closed the case on both the sides in-spite of a motion for an adjournment.

With regard to the report of the Agent, Mysore Railways that the Assistant Engineer called on me on the 9th and 10th October 1935 and that I did not ask him to attend the Court or meet me again for further assistance, I have to state that the Agent has been misinformed by the Engineering staff of the Railway Department. After I wrote my letter No. 119 on 3-10-35 to the Executive Engineer of Mysore Railways, Hassan I met the Assistant Engineer casually on some day, whose exact date I do not remember at this distance of time, when I told him of my letter to the Executive Engineer, he told me that he had no personal knowledge of the questions in dispute and of the agreement in question and he further told me that he

would

would write to his Executive Engineer to depute an officer who had personal knowledge of the matters in dispute. After this, no officer of the Railway Engineering Department did call on me and asked me whether he should attend Court on 19th October. The allegation that I did not ask the Assistant Engineer to attend Court or to meet me again for further assistance, is a plausible excuse set up to get over the risk of blame attaching to the Engineering Department on account of its latches in not evincing proper interest in the progress of the litigation, since the Assistant Engineer expressly told me that he knew nothing in the matter and that he was addressing his Executive Engineer and as the attendance of the said Assistant Engineer was of no use at all litigation.

The Government will be pleased to see, that having requisitioned on 3-10-35 for the services of an officer of the Railway, Engineering Department, well conversent with the matter in dispute in the case to attend my office on the 19th idem and to help me during the trial of the suit so that he may be examined on the Government side, whether I would, if any responsible officer of the Government who was consvers nt with the matter in issue had been deputed to give evidence and to help me during trial, I would have failed to ask him to ~~ask him~~ to attend the court or to meet me again for further assistance. Under these circumstances, as no-body who had personal knowledge of the matter in dispute and who could give evidence in Court about the matters in question did meet me after my letter of 3rd October, I could not give him any instructions about attending the Court or help me in the conduct of the case. If such gentleman had met me, I would have been too glad to ask him to attend Court on the 19th idem and would have examined him as a matter of fact. I am sorry to state that the mere meeting of an officer who is not conversant with the matters is no assistance to me and the only interest that

the Executive Engineer of Mysore Railways of Hassan Division evinced in this case is the writing of his last letter No.R.1274-76 dated 21/23-1-35 received from him (which is enclosed herein) and after this letter, I have not received any communication from him or have obtained any real assistance from him. It is regretable that though the Engineering Department has not evinced proper interest inthe case, it has moved the Railway Agent to report to the Government that the Public Prosecutor has not given proper instructions in the matter and that his subordinates have not disregarded such instructions inspite of my letter No. 119 dated 3-10-36 wherein clear instructions were issued and which have not been complied with. Under these circumstances, I respectfully submit that the balme entirely rests on the Railway Engineering Department and not on me in the least.

I have the honour to be
Sir,
Your most obedient servant,

B. Krishna Rao

Public Prosecutor,
Shimoga Division.

Exhibit B.

XXX XXX XXX

Schedule Agreement:- I, [illegible] Mudaliar, son of [illegible] Mudaliar of Arni, North Arcot District do hereby agree to execute the undermentioned work in accordance with the conditions noted below, and in consideration of payment for the same being made by the Agent, Mysore Railways, hereinafter called the Agent through the Executive Engineer, or any Officer duly appointed to superintendent the work for the time being, at the rates specified in the schedule attached for the quantity of work executed or material supplied.

1 & 2. XX XX

3. In the case of lead work, or inferior material supplied, or of any damage in whatsoever manner caused either to Government or private property, and also in the case of clearing off surplus material, leveling of old roads by Contractor, the Executive Engineer or any officer duly appointed to superintend the work for the time being is empowered to have the lead work or material removed and any damage made good and to have the said clearing off and leveling performed, and may deduct the cost of any such damage from any money that may be due or may become due to the Contractor or may take recover the same from the Contractor's Bills for any other work executed for the Government by the contractor.

4. As security for the due performance of this agreement the Executive Engineer shall deduct and return five percent (5) from each payment on the value of work done up to maximum of Rupees Five.

"XX XXX XXX

10. The whole of the work specified below to be completed by the (c) 31st May of (d) May 29 next., failing which or failing the carrying out of any other condition of this agreement, the whole of the money held in deposit under clause 4 or so much of it as the Agent considers proper will, without prejudice to any other legal or equitable right or remedy which the Agent may have, be absolutely forfeited to the Agent.

"copy"

365
24/1/35

MYSORE RAILWAYS

REMINDER

No/ 274-76 dated the 21-1-13 1935.

To The Public Prosecutor
Shimoga Division
Shimoga

SUBJECT

Further proceedings in the case Mr Devaraja Naidu VS Government

Dear Sir,

I beg to invite attention to ~~my~~ your letter No. 206

dated 27/12/34 and ~~previous reminders~~

~~as noted below~~ and request an early reply thereto. as to the further proceedings of the case

Yours faithfully,

for Executive Engineer,
Mysore Rys., Hassan.
21/1/35

Previous reminders on

Copy of Letter No. 119 dated 3-10-35 from the Public Prosecutor, Shimoga Division, Shimoga to the Executive Engineer, Mysore Railways, Hassan.

::::::::::

Subject:- O.S.2/34-35 on the file of District Judge, Shimoga.
(Devaraja Modaliar Vs. Agent, Mysore - Railways.)

::::::::::

The above suit is posted for evidence to 19th instant and the case will be taken up and finished that day.

The plaintiff has taken the contentions that he is not liable to pay the seignorage charges for removal of metal from the Government land as the agreement is silent about it and that even he is liable, he has to pay only a lesser amount and that the amount claimed on behalf of the Government. So I request you to depute an officer of your department who is conversant with these matters and who can instruct me about the agreement in question and the rate of seinorage usually charged, to attend my office on 19th instant and to help me during the trial of the suit.

If any officer is personally aware of the agreement in question he may be preferably deputed so that I may examine him on Government side."

"Copy"

B Krishna Rao

Public Prosecutor,
Shimoga Division.

TWO ANNAS
THE GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE

Sessions adjourned 9-12-1935
and plaintiffs one witness i.e
Official — witness is present.
'By order'
(Initialled) V L R
Sheristadar

30th September 1935 - The case was
advanced to today and reposted to
19-10-1935 - (Initialled) S R R
District Judge

19th October 1935 - Plaintiff by Mr. in person
Defendants by Mr. B. Krishna Rao.
4 witnesses for plaintiff examined and
that side closed. Defendants
side has no witness and no
evidence. Case closed on both
sides arguments heard
for judgment to 30-10-1935
(Initialled) S R R
District Judge
19-10-35

Notice was issued to Counsel on both
sides stating that judgment in

in this Case will be pronounced at Chickmagalur Camp.

30th October 1935. Plaintiff present. Defendants by Public Prosecutor. Judgment not ready. Adjourned to tomorrow (31-10-35)

(Signed) M. Devaraja Madaliar

(Initialled) SRR

District Judge 30.10.35

31st October 1935. Plaintiff by Mr. Absent. Defendants by the Public Prosecutor. Judgment pronounced decreeing the suit for Rupees 789-10-0 with Costs etc.

(Signed) S Ramaswami Aiyar

District Judge

Shimoga Division

(Initialled) BKR

Government Pleader.

True Copy

Record Keeper.

Mr. Baker

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6/3/36	-	6/3/36	12/3	12/3

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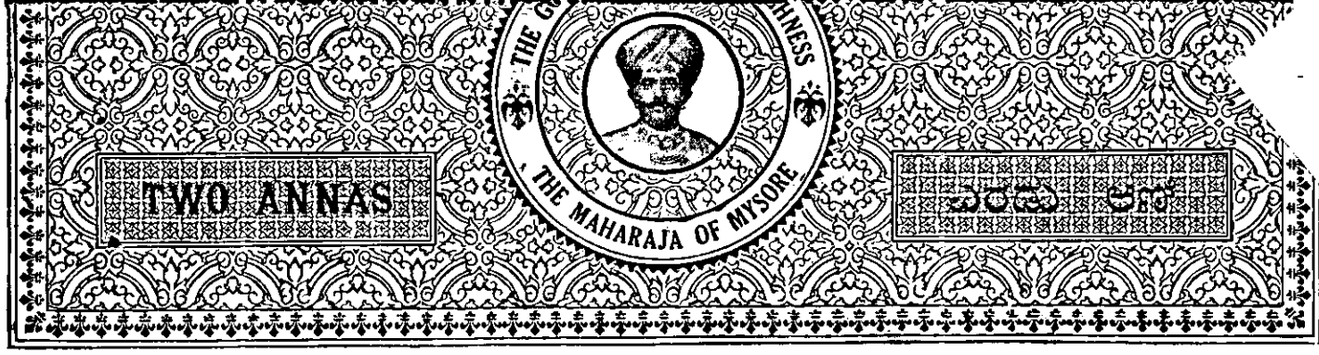
12/3/36	12/3/36	S. Venkoba Rao	



In the Court of the District Judge

Shimoga Division

Original Suit No. 2 of 1934-35

Plaintiff. M. Devaraja Modaliar

v.

Defendants. Government of Mysore

by

(1) Chief Secretary to

Government.

(2) Agent, Mysore Railways

Order Sheet:—

29th July 1934:— Suit filed on 28-7-34,

Suit for the recovery of Rupees

912-2-0 in all being the amount

due on a bill partly paid —

319-10-0 earnest money (Rs. 250-0-0)

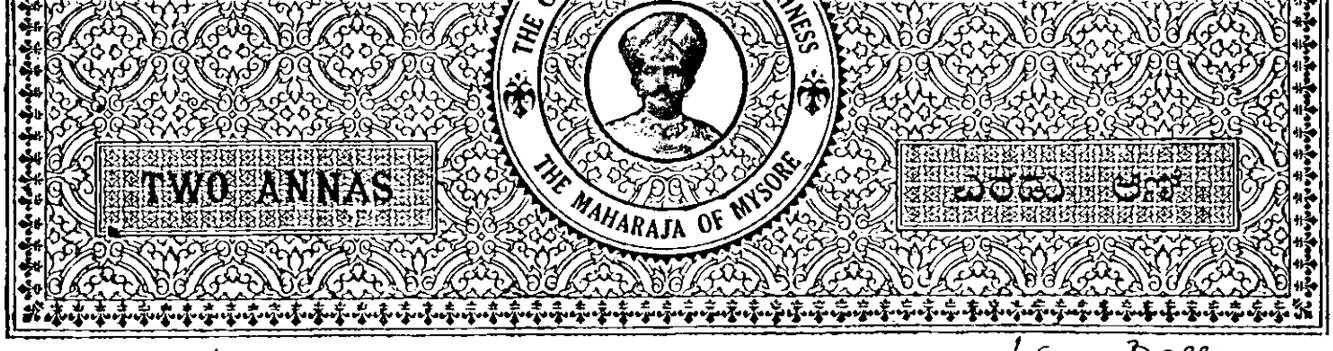
(Rs 100-0-0) Ballast Collections for

Prorailing (Rs. 240-0-0) interest and

(2-8-0) notice charges. — — —

In time. Sufficient Court fee paid.

Advocates notice on behalf of plff.



1st Defdt:

plaintiff issued to the ~~Forest Depot~~

on 2-2-1933. Notice seems to have

been given to the Second Defendant.

Posted to 1-9-34 for the settlement

of issues. (Initialled) H.X.V.

District Judge

Camp. Chikmagalur

29-7-1934.

1st September 1934:— Plff by Mr. H.V.

First defendant the Chief Secretary

to Government. Served personally.

Second Defendant the Agent of

Mysore Railways. Served in person.

Mr. H. Venkoba Rao for Mr. B.K. Rao

for first defendant.

vakalath and defence by 11-9-34.

Second Defendant absent ex parte...

(Initialled) H.X.V

District Judge

11th September 1934. Plaintiff by Mr. H.V.

1st Defendant by Mr. B.K. Rao who

files power. Defence by 11-10-1934

(Initialled) H.X.V

District Judge

Copy applied for on the	Applicant told to appear on the	Applicant appeared on the	Copying stopped for want of copying sheets on the	Additional copying sheets supplied on the

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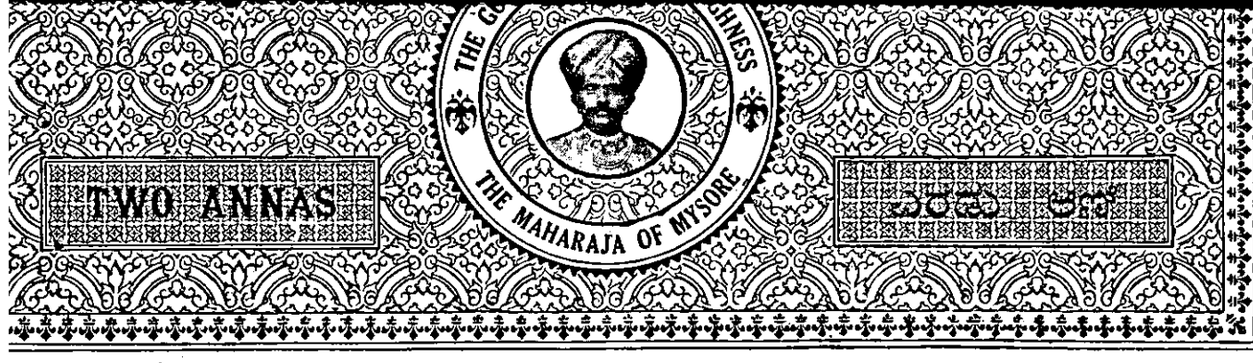
TWO ANNAS
THE MAHARAJA OF MYSORE

11 | 11th October 1934 : Plff by Mr. A. V. Rao
1st Defendant by Mr. B. K. Rao
2nd Defendant by exparte.
Defence not filed.
Mr. B. K. Rao prays for some time. Adjourned to 5-11-1934
(Initialled) A. K. V.
District Judge

5th November 1934 : Plff by Mr. A. V. Rao.
1st Defendant by Mr. A. R. R. for Mr. B. K. Rao.
2nd Defendant absent no, by Mr. A. R. R. for Mr. B. K. Rao.
Exparte order set aside
Defence not filed
Mr. A. R. R. for Mr. B. K. Rao undertakes to file power for Second Defendant and says. That the defence of Defendants 1 and 2 and power are come in a Registered Cover and could not



4

not be received owing to the absence of Mr. B K Rao from the Station and asks for a short adjournment. Adjourned to 13-11-1934. (Initialled) H K V District Judge

(Sd) H R R

13th November 1934 :— Plff by Mr. H V Rao
Defendants by Mr. H R Rao for Mr. B K Rao.
Mr. H R Rao files vakalath for Second Defendant. Vakalath for first has already been filed. Defence filed.
Reply by 10-12-1934.
(Initialled) H K V
District Judge

10th December 1934. On account of Chilaldrug Sessions adjourned to 8-1-1935. By order
(Initialled) V L P
Sheristedar
District Court
Shimoga

8

TWO ANNAS
THE GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE

5

8th January 1935:- Plaintiff by Mr:- as before.
Defendants by Mr. B. K. Rao
Reply filed.
For issues to 17-1-1935
(Initialled) S.R.R
District Judge
8-1-35.

17th January 1935:- Plff by Mr. A.V. Rao
Defendants by Mr. B K Rao,
files draft issues: Seen
and approved:
for trial to 8:7:35
documents: and witness list
in one month.
(Initialled) S.R.R
17-1-35. District Judge

8th July 1935: Summons to P. 2 & 3 not
issued as there was Kadur
Sessions. Adjourned to 17-8-
1935
on account of Kadur
Sessions:- By order
(Initialled) V.L.R
Sheristedar

17

17th August 1935 = Plaintiff by Mr. H V. Rao

Defendants by Mr. B K Rao

Plaintiff took Summons to

3 witnesses

Summons not returned.

Since returned

(1) Executive Engineer. S. P.

(2) Vali Mahamad Sail S.P.

(3) Thimmabovi Summons not returned.

Mr. B K Rao is engaged in the Thread Ceremoney in his house.

Adjourned to 23-9-1935 =

(Initialled) S R K
District Judge

17.8-1935

23rd September 1935:. One P. D.

Plff by Mr:

Defl. by Mr.

Plaintiff ~~Served~~ Summoned one witness :-

Summons not returned. =

On account of Chilaldrug

Sessions

GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE

General and Revenue Secretariat

No. P 5061 Law 31 34-22 *Bangalore, Dated,* ~~16th February~~ 17 1937.

From

The *General Secretary to the Government of His Highness the Maharaja of Mysore.*

To

The Public Prosecutor,
Shimoga.

Sir,

Subject:- O.S. 2/34-35 on the file of the District Judge, Shimoga (Devaraja Mudaliar vs. Government.)

With reference to your letter No. 367 dated 27th March 1936 in re: the above, I am directed to state that Government consider that there has been negligence in the case both on your part and that of the Railway Engineering Department. Steps should have been taken by you in time to have your evidence ready on the date of hearing. It appears also that the Railway Engineering Department did not give you the help you asked for. In these circumstances, the Government do not see any reason to modify or expunge the observations made in Government Order No. 5335-9/Law 31-34-4, dated 12th February 1936.

I have the honor to be,
Sir,
Your most obedient servant,

Sd/- M. Venkatesa Iyengar,
General Secretary to Government.

Memo No. P 5062 dt 17.2.37

Copy of the above is forwarded with compliments to the Agent, Mysore Railways, with reference to his letter No. 9819 F1/39-1 dated 24th June 1936.

MHR

for General Secretary to Government.

TRM.3

Appendix F G—1]

SUBJECT.....

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Section Law

File No. 31 - 34

Serial No. 22

No. P 5061.

Diary No. of letter replied to.....

To

The P. Pr, Shimoga.

General and Revenue Secretariat

( )

the *193* .

O. S. 2/34-35 on the file of the Dist. judge, Shimoga.

(Devaraja Mor. Vs Govt.)

Date of issue 17.2.37

Sir,

Signed by Dvr. BKR

With reference to your letter no 367, dated ~~28-7-~~ 27.3-36 in Re: the above, I am directed to state that Govt consider that there has been ~~a contributory~~ negligence ~~both~~ on the part of ~~by~~ you and that of the Railway Engineering department ~~Steps~~ which should have been taken ~~necessary steps~~ by you in time to have your evidence

List of enclosures.....

Copied by .....

Examined by.....

WD 03601—GPB—30,000—23-9-35

ready on the date of hearing. It ~~looks~~ appears also ~~as if~~ that the Railway Engineering department did not give you the help you asked for. In these circumstances, the Govt do not see any reason to modify or expunge the observations made in G. O. No. 5335-9/Laws 31-34-4, dated 12-2-36.

I have etc:

12.2.37 Gen: Secy:

No. PS062. dt 17.2.37

Copy to the Agent, Mysore Railways with reference to his letter no. 9819 M 34/1, dated 24-6-36.